

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NANCY NUZZI <i>Plaintiff,</i> v. AUPAIRCARE, INC. and FRAN KURZ <i>Defendants.</i>	-	Civil Action No.
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NOTICE OF REMOVAL

Defendants AuPairCare, Inc. and Fran Kurz, by and through their undersigned attorneys, give notice of removal to this Court under 28 U.S.C. §1441 *et seq.* of a state civil action pending in the Superior Court of Somerset County, New Jersey captioned *Nancy Nuzzi v. AuPairCare, Inc. and Fran Kurz* in Docket Number L-798-07, and in support thereof aver as follows:

1. On May 16, 2007, Plaintiff Nancy Nuzzi ("Nuzzi") commenced the above-captioned civil action, docketed as L-798-07 in the Superior Court of Somerset County, New Jersey which is embraced by this judicial district, by filing a Complaint. A true and correct copy of the Complaint is attached hereto as Exhibit "A."

2. Based on information and belief, and pursuant to representations made by Plaintiff's counsel's office, and confirmed by representations made by Guaranteed Subpoena Service, the process server for Plaintiff's Complaint, the Complaint was served on Defendant AuPairCare, Inc. on July 20, 2007 and on Defendant Fran Kurz on August 1, 2007. See Defendants' Counsel's Certification attached hereto as Exhibit "B".

3. Based on information and belief, an improper attempt at service was made on Defendants on July 19, 2007 with copies of the Complaint and Summons being sent via facsimile. See Exhibits "A" and "C", the latter of which is a true and correct copy of the Superior Court Clerk

Summons dated July 17, 2007, which indicates a facsimile transmission date of July 19, 2007.

4. This Notice of Removal is timely, pursuant to 28 U.S.C. §1446(b), since it is being filed within thirty (30) days after service of the Complaint upon the Defendants.

5. According to Plaintiff's Complaint, Plaintiff is asserting claims, *inter alia*, under the Family and Medical Leave Act ("FMLA") 29 U.S.C. § 2615(a)(1). See Exhibit "A" at ¶¶ 16-18.

6. Had this action been brought here initially, this Court would have had original jurisdiction over the subject matter under 28 U.S.C. § 1331, based upon Plaintiff's claims under the FMLA, 29 U.S.C. §§ 2601 *et seq.*

7. Plaintiff also alleges a violation of the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 *et seq.* See Exhibit "A" at ¶¶ 13-15.

8. This Court has supplemental jurisdiction over Plaintiff's LAD claims pursuant to 28 U.S.C. § 1367.

9. There is complete diversity of citizenship of the parties as the Plaintiff is a resident of the State of New Jersey (Complaint ¶ 1), Defendant AuPairCare, Inc. maintains its corporate headquarters in California (Complaint ¶ 2), and Defendant Fran Kurz is a resident of the Commonwealth of Pennsylvania (see Certification of Fran Kurz attached hereto as Exhibit "D" as Plaintiff's Complaint does not assert any residency of the individual defendant).

10. Based on the Complaint allegations, claims and prayers for relief, the amount claimed in controversy has a value in excess of \$75,000.00.

11. Therefore, this Court also has original jurisdiction over this matter pursuant to 28 U.S.C. §1332.

12. Nothing in this Notice of Removal shall be construed to be a waiver of Defendants' rights to challenge personal jurisdiction, venue or forum *non conveniens*.

13. No previous application has been made for the relief requested herein.

14. This Notice of Removal is being simultaneously served on all named parties to the removed case.

15. A written Notice of Filing of Notice of Removal, together with a copy of this Notice, is being filed with the Clerk of Court, Superior Court of Somerset County, New Jersey and served upon Plaintiff as required by 28 U.S.C. § 1446(d).

16. The statutory requirements having been met, this state action is properly removed to this Court.

Respectfully submitted,

**POWELL, TRACHTMAN, LOGAN,
CARRLE & LOMBARD, P.C.**

Dated: August 17, 2007

By: /s/ Lisa R. Marone
Lisa R. Marone, Esquire
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Attorneys for Defendants